



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

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Robert G. Burnley  
Director

Steven A. Dietrich  
Regional Director

### STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION A SPECIAL ORDER BY CONSENT ISSUED TO CINERGY SOLUTIONS OF NARROWS, LLC

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code § 10.1-1307.D, 10.1-1309, and 10.1-1184, and § 10.1-1316.C, between the State Air Pollution Control Board and Cinergy Solutions of Narrows, LLC, for the purpose of resolving certain alleged violations of State Air Pollution Control Laws and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.
6. "Cinergy Solutions of Narrows, LLC" or "CSN" means the corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. "Facility" means the structure at 3520 Virginia Avenue located in Narrows, Virginia.
8. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
9. "Permit" means the Title V Permit, with an amended date of August 17, 2004.
10. "O&M" means operations and maintenance.

**SECTION C: Findings of Fact and Conclusions of Law**

1. CSN owns and operates a facility in Narrows, Virginia, and is subject to the Virginia Air Pollution Control Laws and Regulations.
2. On August 31, 2004, Cinergy Solutions submitted the 2<sup>nd</sup> quarter Excess Emission Report for the #7 boiler. On September 7, 2004, DEQ staff conducted a report review of the submittal. During the review of this report, staff observed six minute opacity periods above the permitted 20% limit. The dates of excess opacity were reported as follows: April 14, 2004, April 22, 2004, May 27, 2004, June 2, 2004 and June 8, 2004.
3. On February 16, 2005, DEQ issued a Notice of Violation to CSN for alleged violations of Virginia Air Pollution Control Law and Regulations. The observations above are cited under the following regulations:

Condition II.A.15, of the August 17, 2004 Title V Permit, states that the visible emissions from each boiler stack (1,2,3,4,5,6, & 7) shall not exceed 20 percent (20%) Opacity except during one six-minute period in any one hour in which visible emissions shall not exceed 60 percent (60%) Opacity, as determined by EPA Method 9.

Section 9 VAC 5-50-20 of the State Air Pollution Control Board Regulations, states that at all times, including periods of startup, shutdown, soot blowing and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with air pollution control practices for minimizing emissions.

2. On June 1, 2005, DEQ staff met with CSN representatives to discuss the aforementioned issues. During this meeting CSN outlined corrective actions taken to date.

**SECTION D: Agreement and Order**

Accordingly the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§10.1-1309 and 10.1-1316, and after consideration of the factors set forth in Va. Code § 10.1-1186.2, orders CSN, and CSN agrees to pay a civil charge of \$1,330.00 in settlement of the violations cited in this Order.

1. **\$1,330.00** of this civil charge shall be paid within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

The payment shall include CSN's Federal ID number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of CSN, for good cause shown by CSN, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to CSN by DEQ on February 16, 2005. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, CSN admits the jurisdictional allegations, but does not admit the factual findings and conclusions of law contained herein.
4. CSN consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. CSN declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right

to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by CSN to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. CSN shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. CSN shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. CSN shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

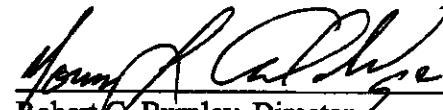
Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and CSN. Notwithstanding the foregoing, CSN agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to CSN, or upon


CSN's receipt of written acknowledgment from DEQ that CSN has completed its obligations under Section D. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve CSN from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, CSN voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 1<sup>st</sup> day of August, 2005.

  
Robert G. Burnley, Director  
Department of Environmental Quality

Cinergy Solutions of Narrows, LLC voluntarily agrees to the issuance of this Order.

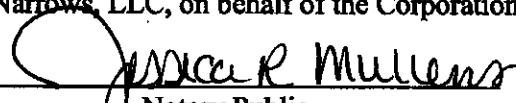
By:   
Date: 7/20/05

Commonwealth of Virginia

City/County of Giles

The foregoing document was signed and acknowledged before me this 20 day of July, 2005, by Scott Abramson, who is  
(name)

Plant manager  
(title) of Cinergy Solutions of Narrows, LLC, on behalf of the Corporation.

  
Notary Public

I was originally commissioned as  
Jessica R. Linkous, Notary Public

My commission expires: 2/28/07

